

ATTACHMENT IV-6

Governmental Conduct Act
NMSA 1978, §§ 10-16-1 to 10-16-17 (Suppl. Pamp. 1993)

meetings" to the end of the first sentence of present Paragraph (6) and substituted "or final action regarding the selection of a contractor shall" for "is to" in the second sentence of that paragraph; in present Subsection I, inserted "and the subject to be discussed" and "with reasonable specificity" in Paragraph (1) and deleted "the closed meetings" following "in an open meeting" and inserted "and stating with reasonable specificity the subject to be discussed" in Paragraph (2); and made stylistic changes in Subsection B and present Subsections D, G, H, and I.

Procurement Code. — The Procurement Code, referred to in Paragraph (6) of Subsection H, is compiled as 13-1-28 to 13-1-117 and 13-1-118 to 13-1-199 NMSA 1978.

Intercommunity water supply association. — An association composed solely of two incorporated

villages for purposes of securing an adequate and economic supply of water for the residents of the villages was a public body subject to the Open Meetings Act, particularly in light of the considerable public authority the association had over the creation, maintenance and distribution of the water to the two villages. 1991 Op. Att'y Gen. No. 91-07.

Where decisions made by telephone, etc.

A county commission may not, consistently with this article, approve purchases by telephone. When it approves purchases, a county commission is conducting public business and taking official action. Therefore, to be valid, this action must be taken by the commissioners acting as a body at a meeting open to the public and according to the requirements of the Open Meetings Act. 1991 Op. Att'y Gen. No. 91-12.

10-15-3. Invalid actions; standing.

A. No resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978. Every resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be presumed to have been taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978.

B. All provisions of the Open Meetings Act [this article] shall be enforced by the attorney general or by the district attorney in the county of jurisdiction. However, nothing in that act shall prevent an individual from independently applying for enforcement through the district courts.

C. The district courts of this state shall have jurisdiction, upon the application of any person to enforce the purpose of the Open Meetings Act, by injunction, mandamus or other appropriate order. The prevailing party in that legal action shall be awarded court costs.

D. No section of the Open Meetings Act shall be construed to preclude other remedies or rights not relating to the question of open meetings.

History: 1953 Comp., § 5-6-25, enacted by Laws 1974, ch. 91, § 3; 1989, ch. 299, § 3; 1993, ch. 262, § 2.

The 1993 amendment, effective June 18, 1993, purported to amend this section but made no change.

ARTICLE 16

Governmental Conduct

- Sec.
- 10-16-1. Short title.
 - 10-16-2. Definitions.
 - 10-16-3. Ethical principles of public service; certain official acts prohibited; penalty.
 - 10-16-4. Official act for personal financial interest prohibited; disqualification from official act; providing a penalty.
 - 10-16-4.1. Honoraria prohibited.
 - 10-16-5. Repealed.
 - 10-16-6. Confidential information.
 - 10-16-7. Contracts involving public officers or employees.

- Sec.
- 10-16-8. Contracts involving former public officers or employees; representation of clients after government service.
 - 10-16-9. Contracts involving legislators; representation before state agencies.
 - 10-16-10. Repealed.
 - 10-16-11. Codes of conduct.
 - 10-16-12. Repealed.
 - 10-16-13.1. Education and voluntary compliance.
 - 10-16-14. Enforcement procedures.
 - 10-16-15. Repealed.
 - 10-16-17. Criminal penalties.

10-16-1. Short title.

Chapter 10, Article 16 NMSA 1978 may be cited as the "Governmental Conduct Act".

History: 1953 Comp., § 5-12-1, enacted by Laws 1967, ch. 306, § 1; 1993, ch. 46, § 26.

The 1993 amendment, effective July 1, 1993, rewrote this section which read "This act may be cited

as the 'Conflict of Interest Act'.

Scope of act.

As a state agency, the retiree health care authority

is subject to those provisions of this article that apply to state agencies. 1991 Op. Att'y Gen. No. 91-06.

10-16-2. Definitions.

As used in the Governmental Conduct Act [this article]:

A. "business" means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;

B. "confidential information" means information that by law or practice is not available to the public;

C. "employment" means rendering of services for compensation in the form of salary as an employee;

D. "financial interest" means an interest held by an individual, his spouse or dependent minor children that is:

(1) an ownership interest in business; or

(2) any employment or prospective employment for which negotiations have already begun;

E. "official act" means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority;

F. "person" means an individual or entity;

G. "public officer or employee" means any person who has been elected to, appointed to or hired for any state office and who receives compensation in the form of salary or is eligible for per diem or mileage, but excludes legislators and judges;

H. "standards" means the conduct required by the Governmental Conduct Act; and

I. "substantial interest" means an ownership interest that is greater than twenty percent.

History: 1953 Comp., § 5-12-2, enacted by Laws 1967, ch. 306, § 2; 1979, ch. 350, § 1; 1993, ch. 46, § 27.

The 1993 amendment, effective July 1, 1993, substituted "Governmental Conduct Act" for "Conflict of Interest Act" in the introductory paragraph and in Subsection H; deleted former Subsections C and D, defining "controlling interest" and "employee"; redesignated former Subsections E through G as current Subsections C through E; inserted "dependent" preceding "minor" in current Subsection D; deleted "except the term does not mean an act of the legislature or an act of general applicability" at the end of current Subsection E; added Subsections F, G, and I; and made minor stylistic changes throughout the section.

History: 1978 Comp., § 10-16-3, enacted by Laws 1993, ch. 46, § 28.

10-16-3. Ethical principles of public service; certain official acts prohibited; penalty.

A. A legislator, public officer or employee shall treat his government position as a public trust. He shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests incompatible with the public interest.

B. A legislator, public officer or employee shall conduct himself in a manner that justifies the confidence placed in him by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.

C. Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times reasonable efforts shall be made to avoid undue influence and abuse of office in public service.

D. No legislator, public officer or employee may request or receive, and no person may offer a legislator, public officer or employee, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: 1978 Comp., § 10-16-3, enacted by Laws 1993, ch. 46, § 28.

Repeals and reenactments. — Laws 1993, ch. 46, § 28 repeals former 10-16-3 NMSA 1978, as enacted

by Laws 1967, ch. 306, § 3, relating to gifts, and enacts the above section, effective July 1, 1993. For

provisions of former section, see 1992 Replacement Pamphlet.

10-16-4. Official act for personal financial interest prohibited; disqualification from official act; providing a penalty.

A. It is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing his own financial interest or financial position. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. A public officer or employee shall disqualify himself from engaging in any official act directly affecting his financial interest.

C. If the public interest so requires, the governor may make an exception to Subsection B of this section for a public officer or employee by expressing the exception and the reasons for it in writing. The exception is effective when the public officer or employee files this writing with the secretary of state.

History: 1953 Comp., § 5-12-4, enacted by Laws 1967, ch. 306, § 4; 1993, ch. 46, § 29.

The 1993 amendment, effective July 1, 1993, rewrote the catchline which read "Disqualification"; added current Subsection A; redesignated former Subsections A and B as current Subsections B and C; rewrote current Subsection B which read "An em-

ployee shall disqualify himself from participating in any official act directly affecting a business in which he has a financial interest"; and, in current Subsection C, substituted "to Subsection B of this section" for "from this section", inserted "public officer or" in two places, and made minor stylistic changes.

10-16-4.1. Honoraria prohibited.

No legislator, public officer or employee may request or receive an honorarium for a speech or service rendered that relates to the performance of public duties. For the purposes of this section, "honorarium" means payment of money, or any other thing of value in excess of one hundred dollars (\$100), but does not include reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service, or payment or compensation for services rendered in the normal course of a private business pursuit.

History: Laws 1993, ch. 46, § 38.

Effective dates. — Laws 1993, ch. 46, § 60 makes the act effective on July 1, 1993.

10-16-5. Repealed.

Repeals. — Laws 1993, ch. 46, § 58 repeals 10-16-5 NMSA 1978, as enacted by Laws 1967, ch. 306, § 5, relating to acquiring financial interest, effective July

1, 1993. For provisions of former section, see 1992 Replacement Pamphlet.

10-16-6. Confidential information.

No legislator, public officer or employee shall use confidential information acquired by virtue of his state employment or office for his or another's private gain.

History: 1953 Comp., § 5-12-6, enacted by Laws 1967, ch. 306, § 6; 1993, ch. 46, § 30.

The 1993 amendment, effective July 1, 1993, inserted "public officer".

10-16-7. Contracts involving public officers or employees.

A state agency shall not enter into any contract with a public officer or employee of the state or with a business in which the public officer or employee has a substantial interest unless the public officer or employee has disclosed his substantial interest and unless the contract is awarded pursuant to the Procurement Code; provided that this section does not

apply to a contract of official employment with the state or to contracts made pursuant to the provisions of the University Research Park Act [21-28-1 to 21-28-25 NMSA 1978].

History: 1953 Comp., § 5-12-7, enacted by Laws 1967, ch. 306, § 7; 1983, ch. 90, § 1; 1989, ch. 264, § 26; 1993, ch. 46, § 31.

The 1993 amendment, effective July 1, 1993, inserted "Public Officers or" in the catchline and inserted "public officer or" in three places; substituted the language beginning "substantial interest unless" and ending at the beginning of the proviso for "con-

trolling interests involving services or property of a value in excess of one thousand dollars (\$1,000) when the employee has disclosed his controlling interest unless the contract is made after public notice and competitive bidding"; and made a minor stylistic change.

Procurement Code. — See 13-1-28 NMSA 1978 and notes thereto.

10-16-8. Contracts involving former public officers or employees; representation of clients after government service.

A. A state agency shall not enter into a contract with, or take any action favorably affecting, any person or business that is:

(1) represented personally in the matter by a person who has been a public officer or employee of the state within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the public officer or employee; or

(2) assisted in the transaction by a former public officer or employee of the state whose official act, while in state employment, directly resulted in the agency's making that contract or taking that action.

B. A former public officer or employee shall not represent a person in his dealings with the government on a matter in which the former public officer or employee participated personally and substantially while a public officer or employee.

C. For a period of one year after leaving government service or employment, a former public officer or employee shall not represent for pay a person before the government agency at which the former public officer or employee served or worked.

History: 1953 Comp., § 5-12-8, enacted by Laws 1967, ch. 306, § 8; 1983, ch. 90, § 2; 1993, ch. 46, § 32.

The 1993 amendment, effective July 1, 1993, rewrote the catchline which read "Contracts Involving Former Employees"; inserted the subsection designa-

tion "A" at the beginning, redesignated former Subsections A and B as Paragraphs (1) and (2), and added Subsections B and C; and, in Subsection A, inserted "public officer or" in three places and made minor stylistic changes.

10-16-9. Contracts involving legislators; representation before state agencies.

A. A state agency shall not enter into any procurement contract for services, construction or items of personal property with a legislator or with a business in which the legislator has a substantial interest unless the legislator has disclosed his substantial interest and unless the contract is awarded in accordance with the provisions of the Procurement Code.

B. A legislator shall not appear for, represent or assist another person in any matter before a state agency, unless without compensation or for the benefit of a constituent, except for legislators who are attorneys or other professional persons engaged in the conduct of their professions and, in those instances, the legislator shall refrain from references to his legislative capacity except as to matters of scheduling, from communications on legislative stationery and from threats or implications relating to legislative actions.

History: 1953 Comp., § 5-12-9, enacted by Laws 1967, ch. 306, § 9; 1989, ch. 143, § 1; 1993, ch. 46, § 33.

The 1993 amendment, effective July 1, 1993, inserted "Representation Before State Agencies" in the catchline; designated the former undesignated provisions as Subsection A and added Subsection B; and, in Subsection A, substituted the language beginning "has a substantial interest" for "has controlling interest in excess of one thousand dollars (\$1,000) where

the legislator has disclosed his controlling interest unless the contract is made after public notice and competitive sealed bidding or competitive sealed proposal in accordance with the provisions of the Procurement Code."

Procurement Code. — The Procurement Code, referred to in Paragraph (6) of Subsection H, is compiled as 13-1-28 to 13-1-117 and 13-1-118 to 13-1-199 NMSA 1978.

10-16-10. Repealed.

Repeals. — Laws 1993, ch. 46, § 58 repeals 10-16-10 NMSA 1978, as enacted by Laws 1967, ch. 306, § 10, relating to disclosures, effective July 1, 1993.

For provisions of former section, see 1992 Replacement Pamphlet.

10-16-11. Codes of conduct.

A. By January 1, 1994, each elected statewide executive branch public officer shall adopt a general code of conduct for employees subject to his control. The New Mexico legislative council shall adopt a general code of conduct for all legislative branch employees. The general codes of conduct shall be based on the principles set forth in the Governmental Conduct Act [this article].

B. Within thirty days after the general codes of conduct are adopted, they shall be given to and reviewed with all executive and legislative branch officers and employees. All new public officers and employees of the executive and legislative branches shall review the employees' general code of conduct prior to or at the time of being hired.

C. The head of every executive and legislative agency and institution of the state may draft a separate code of conduct for all public officers and employees in that agency or institution. The separate agency code of conduct shall prescribe standards, in addition to those set forth in the Governmental Conduct Act and the general codes of conduct for all executive and legislative branch public officers and employees, that are peculiar and appropriate to the function and purpose for which the agency or institution was created or exists. The separate codes, upon approval of the responsible executive branch public officer for executive branch public officers and employees or the New Mexico legislative council for legislative branch employees, govern the conduct of the public officers and employees of that agency or institution and, except for those public officers and employees removable only by impeachment, shall, if violated, constitute cause for dismissal, demotion or suspension. The head of each executive and legislative branch agency shall adopt ongoing education programs to advise public officers and employees about the codes of conduct. All codes shall be filed with the secretary of state and are open to public inspection.

D. Codes of conduct shall be reviewed at least once every four years. An amended code shall be filed as provided in Subsection C of this section.

E. All legislators shall attend a minimum of one hour of ethics continuing education and training annually.

History: 1953 Comp., § 5-12-11, enacted by Laws 1967, ch. 306, § 11; 1969, ch. 93, § 1; 1993, ch. 46, § 34.

The 1993 amendment, effective July 1, 1993, re-wrote this section to the extent that a detailed comparison is impracticable.

10-16-12. Repealed.

Repeals. — Laws 1993, ch. 46, § 58 repeals 10-16-12 NMSA 1978, as enacted by Laws 1967, ch. 306, § 12, relating to disclosure for person on retainer or

contract, effective July 1, 1993. For provisions of former section, see 1992 Replacement Pamphlet.

10-16-13.1. Education and voluntary compliance.

A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Governmental Conduct Act of those duties. This includes advising all those persons at least annually of that act's ethical principles.

B. The secretary of state shall seek first to ensure voluntary compliance with the provisions of the Governmental Conduct Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter. Referrals for civil enforcement of that act shall be pursued only after efforts to secure voluntary compliance with that act have failed.

History: 1978 Comp., § 10-16-13.1, enacted by Laws 1993, ch. 46, § 35.

Effective dates. — Laws 1993, ch. 46, § 60 makes the act effective on July 1, 1993.

10-16-14. Enforcement procedures.

A. The secretary of state may refer suspected violations of the Governmental Conduct Act [this article] to the attorney general, district attorney or appropriate state agency or legislative body for enforcement. If a suspected violation involves the office of the secretary of state, the attorney general may enforce that act. If a suspected violation involves the office of the attorney general, a district attorney may enforce that act.

B. Violation of the provisions of the Governmental Conduct Act by any legislator is grounds for discipline by the appropriate legislative body.

C. If the attorney general determines that there is sufficient cause to file a complaint against a public officer removable only by impeachment, he shall refer the matter to the house of representatives of the legislature. If within thirty days after the referral the house of representatives has neither formally declared that the charges contained in the complaint are not substantial nor instituted hearings on the complaint, the attorney general shall make public the nature of the charges, but he shall make clear that the merits of the charges have never been determined. Days during which the legislature is not in session shall not be included in determining the thirty-day period.

D. Violation of the provisions of the Governmental Conduct Act by any public officer or employee, other than those covered by Subsection C of this section, is grounds for discipline, including dismissal, demotion or suspension. Complaints against executive branch employees may be filed with the agency head and reviewed pursuant to the procedures provided in the Personnel Act. Complaints against legislative branch employees may be filed with and reviewed pursuant to procedures adopted by the New Mexico legislative council. Complaints against judicial branch employees may be filed and reviewed pursuant to the procedures provided in the judicial personnel rules.

E. Subject to the provisions of this section, the Governmental Conduct Act may be enforced by the attorney general. Except as regards legislators or statewide elected officials, a district attorney in the county where a person resides or where a violation occurred may also enforce that act. Enforcement actions may include seeking civil injunctive or other appropriate orders.

History: 1953 Comp., § 5-12-14, enacted by Laws 1967, ch. 306, § 14; 1993, ch. 46, § 36.

The 1993 amendment, effective July 1, 1993, added current Subsections A and B and redesignated former Subsections A and B as current Subsections C and D; substituted "a public officer" for "a legislator or an employee" in the first sentence of Subsection C; rewrote the first sentence of Subsection D which read "Violation of the provisions of the Conflict of Interest Act by any employee, other than those covered by Subsection A of this section, is grounds for dismissal, demotion or suspension"; added the second and third sentences in Subsection D; added Subsection E; and made minor stylistic changes in Subsection C.

Appropriations. — Laws 1993, ch. 366, § 3R,

effective June 18, 1993, appropriates \$293,000 from the general fund to the secretary of state for expenditure in the eighty-first and eighty-second fiscal years to implement governmental ethics provisions contingent upon enactment of house bill 105 of the forty-first legislature, first session (Chapter 46 of Laws 1993). Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 5 provides for the severability of that act if any part or application thereof is held invalid.

Personnel Act. — The Personnel Act is compiled as 10-9-1 to 10-9-4, 10-9-8 to 10-9-10, 10-9-12, 10-9-13, 10-9-15 to 10-9-17 and 10-9-20 to 10-9-25 NMSA 1978.

10-16-15. Repealed.

Repeals. — Laws 1993, ch. 46, § 58 repeals 10-16-15 NMSA 1978, as enacted by Laws 1967, ch. 306, § 15, relating to standing in court, effective July 1,

1993. For provisions of former section, see 1992 Replacement Pamphlet.

10-16-17. Criminal penalties.

Unless specified otherwise in the Governmental Conduct Act [this article], any person who knowingly and willfully violates any of the provisions of that act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000)

or by imprisonment for not more than one year or both. Nothing in the Governmental Conduct Act shall preclude criminal prosecution for bribery or other provisions of law set forth in the constitution of New Mexico or by statute.

History: Laws 1993, ch. 46, § 37.

Effective dates. — Laws 1993, ch. 46, § 60 makes the act effective on July 1, 1993.

ARTICLE 16A

Financial Disclosures

Sec.	Sec.
10-16A-1. Short title; financial disclosure act.	employees of state agencies; condition of employment.
10-16A-2. Definitions.	10-16A-5. Education and voluntary compliance.
10-16A-3. Required disclosures for certain candidates and public officers and employees; condition for placement on ballot or appointment.	10-16A-6. Investigations; binding arbitration; fines; enforcement.
10-16A-4. Disclosures by certain public officers or	10-16A-7. Criminal penalties.

10-16A-1. Short title; financial disclosure act.

Sections 39 through 45 [10-16A-1 to 10-16A-7 NMSA 1978] of this act may be cited as the "Financial Disclosure Act".

History: Laws 1993, ch. 46, § 39.

Effective dates. — Laws 1993, ch. 46, § 60 makes the Financial Disclosure Act effective on July 1, 1993.

10-16A-2. Definitions.

As used in the Financial Disclosure Act [10-16A-1 to 10-16A-7 NMSA 1978]:

A. "business" means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;

B. "employment" means rendering of services for compensation in the form of salary as an employee;

C. "financial interest" means an interest held by an individual or his spouse that is:
 (1) an ownership interest in business; or
 (2) any employment or prospective employment for which negotiations have already begun;

D. "official act" means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority;

E. "person" means an individual or entity; and

F. "public officer or employee" means any person who has been elected to, appointed to or hired for any state office and who receives compensation in the form of salary or is eligible for per diem or mileage, but excludes legislators and judges.

History: Laws 1993, ch. 46, § 40.

Effective dates. — Laws 1993, ch. 46, § 60 makes the Financial Disclosure Act effective on July 1, 1993.

10-16A-3. Required disclosures for certain candidates and public officers and employees; condition for placement on ballot or appointment.

A. At the time of filing a declaration of candidacy, a candidate for legislative or statewide office shall file with the proper filing officer, as defined in the Election Code [Chapter 1 NMSA 1978], a financial disclosure statement. In addition, each year during the month of January, a legislator and a person holding a statewide office shall file with that position's

ATTACHMENT IV-7

Financial Disclosure Act

NMSA 1978, §§ 10-16A-1 to 10-16A-7 (Suppl. Pamp. 1993)

or by imprisonment for not more than one year or both. Nothing in the Governmental Conduct Act shall preclude criminal prosecution for bribery or other provisions of law set forth in the constitution of New Mexico or by statute.

History: Laws 1993, ch. 46, § 37.

Effective dates. — Laws 1993, ch. 46, § 60 makes the act effective on July 1, 1993.

ARTICLE 16A

Financial Disclosures

Sec.	Sec.
10-16A-1. Short title; financial disclosure act.	employees of state agencies; condition of employment.
10-16A-2. Definitions.	
10-16A-3. Required disclosures for certain candidates and public officers and employees; condition for placement on ballot or appointment.	10-16A-5. Education and voluntary compliance.
	10-16A-6. Investigations; binding arbitration; fines; enforcement.
10-16A-4. Disclosures by certain public officers or	10-16A-7. Criminal penalties.

10-16A-1. Short title; financial disclosure act.

Sections 39 through 45 [10-16A-1 to 10-16A-7 NMSA 1978] of this act may be cited as the "Financial Disclosure Act".

History: Laws 1993, ch. 46, § 39.

Effective dates. — Laws 1993, ch. 46, § 60 makes the Financial Disclosure Act effective on July 1, 1993.

10-16A-2. Definitions.

As used in the Financial Disclosure Act [10-16A-1 to 10-16A-7 NMSA 1978]:

A. "business" means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;

B. "employment" means rendering of services for compensation in the form of salary as an employee;

C. "financial interest" means an interest held by an individual or his spouse that is:

(1) an ownership interest in business; or

(2) any employment or prospective employment for which negotiations have already begun;

D. "official act" means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority;

E. "person" means an individual or entity; and

F. "public officer or employee" means any person who has been elected to, appointed to or hired for any state office and who receives compensation in the form of salary or is eligible for per diem or mileage, but excludes legislators and judges.

History: Laws 1993, ch. 46, § 40.

Effective dates. — Laws 1993, ch. 46, § 60 makes the Financial Disclosure Act effective on July 1, 1993.

10-16A-3. Required disclosures for certain candidates and public officers and employees; condition for placement on ballot or appointment.

A. At the time of filing a declaration of candidacy, a candidate for legislative or statewide office shall file with the proper filing officer, as defined in the Election Code [Chapter 1 NMSA 1978], a financial disclosure statement. In addition, each year during the month of January, a legislator and a person holding a statewide office shall file with that position's

proper filing officer, as defined in the Election Code, a financial disclosure statement or a subsequent statement for each succeeding year that identifies changed circumstances, as provided in Subsection D of this section. If the proper filing officer is not the secretary of state, the proper filing officer shall promptly forward a copy of the financial disclosure statement to the secretary of state.

B. A state agency head or official whose appointment to a board or commission is subject to confirmation by the senate shall file with the secretary of state a financial disclosure statement within thirty days of appointment and during the month of January every year thereafter.

C. The financial disclosure statement shall include for any person identified in Subsection A or B of this section and his spouse the following information for the prior calendar year:

(1) the full name, mailing address and residence address of each person covered in the disclosure statement, except the address of the spouse need not be disclosed; the name and address of the person's and spouse's employer and the title or position held; and a brief description of the nature of the business or occupation;

(2) all sources of gross income of more than five thousand dollars (\$5,000) to each person covered in the disclosure statement, identified by general category descriptions that disclose the nature of the income source, in the following broad categories: finance and banking, farming and ranching, medicine and health care, insurance (as a business and not as payment on an insurance claim), oil and gas, transportation, utilities, general stock market holdings, bonds, government, education, manufacturing, real estate, consumer goods sales with a general description of the consumer goods and the category "other", with direction that the income source be similarly described. In describing a law practice, consulting operation or similar business of the person or spouse, the major areas of specialization or income sources shall be described, and if the spouse or a person in the reporting person's or spouse's law firm, consulting operation or similar business is or was during the reporting calendar year or the prior calendar year a registered lobbyist under the Lobbyist Regulation Act [2-11-1 to 2-11-9 NMSA 1978], the names and addresses of all clients represented for lobbying purposes during those two years shall be disclosed;

(3) a general description of the type of real estate owned in New Mexico, other than a personal residence, and the county where it is located;

(4) all other New Mexico business interests not otherwise listed of ten thousand dollars (\$10,000) or more in a New Mexico business or entity, including any position held and a general statement of purpose of the business or entity;

(5) all memberships by the reporting individual and his spouse on boards of for-profit businesses in New Mexico;

(6) all New Mexico professional licenses held;

(7) each state agency that was sold goods or services in excess of five thousand dollars (\$5,000) during the prior calendar year by a person covered in the disclosure statement;

(8) each state agency, other than a court, before which a person covered in the disclosure statement represented or assisted clients in the course of his employment during the prior calendar year; and

(9) a general category that allows the person filing the disclosure statement to provide whatever other financial interest or additional information the person believes should be noted to describe potential areas of interest that should be disclosed.

D. After filing the first financial disclosure statement required by this section, a subsequent statement for each of the next four years need only identify changes that must be disclosed to describe current circumstances. A complete financial disclosure statement shall be filed every five years. The secretary of state shall prepare a simplified financial disclosure statement form so that subsequent reports need disclose only changed circumstances.

E. The financial disclosure statements required by this section shall be retained by the state for five years from the date of filing and shall be made available for inspection by any citizen of the state.

F. A person who files a financial disclosure statement shall be allowed to file an amended statement at any time to reflect significant changed circumstances that occurred since the last report was filed.

G. Any candidate for a legislative or statewide office who fails or refuses to file a financial disclosure statement required by this section before the final date for the withdrawal of candidates shall not have his name printed on the ballot.

H. For a state agency head or an official whose appointment to a board or commission is subject to confirmation by the senate, the filing of the financial disclosure statement required by this section is a condition of entering upon and continuing in state employment or holding an appointed position.

History: Laws 1993, ch. 46, § 41.

Effective dates. — Laws 1993, ch. 46, § 60 makes the Financial Disclosure Act effective on July 1, 1993.

10-16A-4. Disclosures by certain public officers or employees of state agencies; condition of employment.

A. Every employee who is not otherwise required to file a financial disclosure statement under the Financial Disclosure Act [10-16A-1 to 10-16A-7 NMSA 1978] and who has a financial interest that he believes or has reason to believe may be affected by his official act or actions of the state agency by which he is employed shall disclose the nature and extent of that interest. The disclosures shall be made in writing to the secretary of state before entering state employment and during the month of January every year thereafter.

B. Every public officer who is not otherwise required to file a financial disclosure statement under the Financial Disclosure Act and who has a financial interest that he believes or has reason to believe may be affected by his official act or actions of the board or commission to which he is appointed shall disclose the nature and extent of that interest. The disclosures shall be made in writing to the secretary of state before taking office and during the month of January every year thereafter.

C. The information on the disclosures shall be made available by the secretary of state for inspection to any citizen of this state.

D. The filing of disclosures pursuant to this section is a condition of entering upon and continuing in state employment or, for persons subject to Subsection B of this section, of holding public office.

History: Laws 1993, ch. 46, § 42.

Effective dates. — Laws 1993, ch. 46, § 60 makes the Financial Disclosure Act effective on July 1, 1993.

10-16A-5. Education and voluntary compliance.

A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Financial Disclosure Act [10-16A-1 to 10-16A-7 NMSA 1978] of those duties. This includes providing timely advance notice of the required financial disclosure statement and preparing forms that are clear and easy to complete.

B. The secretary of state shall seek first to ensure voluntary compliance with the provisions of the Financial Disclosure Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter before fines are imposed. Referrals for civil enforcement of the Financial Disclosure Act shall be pursued only after efforts to secure voluntary compliance with that act have failed.

History: Laws 1993, ch. 46, § 43.

Effective dates. — Laws 1993, ch. 46, § 60 makes the Financial Disclosure Act effective on July 1, 1993.

10-16A-6. Investigations; binding arbitration; fines; enforcement.

A. The secretary of state may conduct thorough examinations of statements and initiate investigations to determine whether the Financial Disclosure Act [10-16A-1 to 10-16A-7 NMSA 1978] has been violated. Any person who believes that act has been violated may file a written complaint with the secretary of state. The secretary of state shall adopt procedures for processing complaints and notifications of violations.

B. If the secretary of state determines that a violation has occurred for which a penalty should be imposed, the secretary of state shall so notify the person charged and impose the penalty. If the person charged disputes the secretary of state's determination, the person charged may request binding arbitration.

C. The arbitration decision shall be decided by a panel of three persons. The secretary of state shall choose one panel member within fifteen days of receipt of the request for arbitration; the person charged shall choose another panel member and submit the arbitrator's name with the request for arbitration; and those two members shall choose the third panel member. If no agreement is reached on a third panel member within thirty days of receipt of the request for arbitration, the presiding judge of the district court for the first judicial district shall appoint the third panel member. No panel member may be a person subject to the Financial Disclosure Act, Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] or Lobbyist Regulation Act [2-11-1 to 2-11-9 NMSA 1978]. Panel members shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] plus reimbursement for reasonable actual expenses.

D. The arbitration panel may take any action the secretary of state is authorized to take. The panel shall state the reasons for its decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued within forty-five days of the conclusion of the hearing. Unless otherwise provided for in this section, the procedures for the arbitration shall be governed by the Uniform Arbitration Act [44-7-1 to 44-7-22 NMSA 1978], including the procedures set forth in Section 44-7-7 NMSA 1978 authorizing the issuance of subpoenas. No panel member shall be subject to liability for actions taken pursuant to this section.

E. Any person who files a statement or report after the deadline imposed by the Financial Disclosure Act, or any person who files a false or incomplete statement or report, shall be liable for and shall pay to the secretary of state, at or from the time initially required for the filing, fifty dollars (\$50.00) per day for each regular working day after the time required for the filing of the statement or report until the complete report is filed, up to a maximum of five thousand dollars (\$5,000).

F. The secretary of state may refer a matter to the attorney general or a district attorney for a civil injunctive or other appropriate order or enforcement.

History: Laws 1993, ch. 46, § 44.

Effective dates. — Laws 1993, ch. 46, § 60 makes the Financial Disclosure Act effective on July 1, 1993.

10-16A-7. Criminal penalties.

Any person who knowingly and willfully violates any of the provisions of the Financial Disclosure Act [10-16A-1 to 10-16A-7 NMSA 1978] is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year or both.

History: Laws 1993, ch. 46, § 45.

Effective dates. — Laws 1993, ch. 46, § 60 makes the Financial Disclosure Act effective on July 1, 1993.

Severability clauses. — Laws 1993, ch. 46, § 59 provides for the severability of the act if any part or application thereof is held invalid.

ATTACHMENT IV-8

Sentencing (Criminal Procedure) Excerpts
NMSA 1978, § 31-18-15 (Cum. Supp. 1993) and
NMSA 1978, § 31-19-1 (Repl. Pamp. 1990)

B. In the event the death penalty in a capital felony case is held to be unconstitutional or otherwise invalidated by the supreme court of the state of New Mexico or the supreme court of the United States, the person previously sentenced to death for a capital felony shall be sentenced to life imprisonment.

History: 1978 Comp., § 31-18-14, enacted by Laws 1979, ch. 150, § 1; 1993, ch. 77, § 5.

The 1993 amendment, effective July 1, 1993, substituted "may be sentenced" for "shall be sentenced" in the last sentence of Subsection A and added "but shall not be punished by death" at the end thereof.

Law reviews. — For article, "Unintentional homi-

cides caused by risk-creating conduct: Problems in distinguishing between depraved mind murder, second degree murder, involuntary manslaughter, and noncriminal homicide in New Mexico," 20 N.M.L. Rev. 55 (1990).

For note on Imposing the Death Penalty upon Juvenile Offenders, see 21 N.M.L. Rev. 373 (1991).

31-18-15. Sentencing authority; noncapital felonies; basic sentences and fines; parole authority.

A. If a person is convicted of a noncapital felony, the basic sentence of imprisonment is as follows:

- (1) for a first degree felony, eighteen years imprisonment;
- (2) for a second degree felony, nine years imprisonment;
- (3) for a third degree felony, three years imprisonment; or
- (4) for a fourth degree felony, eighteen months imprisonment.

B. The appropriate basic sentence of imprisonment shall be imposed upon a person convicted of a first, second, third or fourth degree felony unless the court alters such sentence pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

C. The court shall include in the judgment and sentence of each person convicted of a first, second, third or fourth degree felony and sentenced to imprisonment in a corrections facility designated by the corrections department authority for a period of parole to be served in accordance with the provisions of Section 31-21-10 NMSA 1978 after the completion of any actual time of imprisonment and authority to require, as a condition of parole, the payment of the costs of parole services and reimbursement to a law enforcement agency or local crime stopper program in accordance with the provisions of that section. The period of parole shall be deemed to be part of the sentence of the convicted person in addition to the basic sentence imposed pursuant to Subsection A of this section together with alterations, if any, pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

D. When a court imposes a sentence of imprisonment pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the basic sentence of imprisonment provided pursuant to the provisions of Subsection A of this section, the period of parole shall be served in accordance with the provisions of Section 31-21-10 NMSA 1978 for the degree of felony for the basic sentence for which the inmate was convicted. For the purpose of designating a period of parole, a court shall not consider that the basic sentence of imprisonment was suspended or deferred and that the inmate served a period of imprisonment pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

E. The court may, in addition to the imposition of a basic sentence of imprisonment, impose a fine not to exceed:

- (1) for a first degree felony, fifteen thousand dollars (\$15,000);
- (2) for a second degree felony, ten thousand dollars (\$10,000); or
- (3) for a third or fourth degree felony, five thousand dollars (\$5,000).

History: 1953 Comp., § 40A-29-28, enacted by Laws 1977, ch. 216, § 4; 1979, ch. 152, § 1; 1980, ch. 38, § 1; 1981, ch. 285, § 1; 1987, ch. 139, § 3; 1993, ch. 38, § 1; 1993, ch. 182, § 1.

1993 amendments. — Laws 1993, ch. 38, § 1, effective July 1, 1993, in Subsection D, substituting "one hundred thousand dollars (\$100,000)" for "fifteen

thousand dollars (\$15,000)" in Paragraph (1) and "fifty thousand dollars (\$50,000)" for "ten thousand dollars (\$10,000)" in Paragraph (2), deleting "or fourth" preceding "degree" and substituting "twenty-five thousand dollars (\$25,000)" for "five thousand dollars (\$5,000)" in Paragraph (3), and adding a Paragraph (4), relating to fourth degree felony, was

approved on March 17, 1993. However, Laws 1993, ch. 182, § 1, effective July 1, 1993, inserting present Subsection D, and redesignating former Subsection D as present Subsection E, was approved on April 3, 1993. The section is set out as amended by Laws 1993, ch. 182, § 1. See 12-1-8 NMSA 1978.

Law reviews. — For article, "Unintentional homicides caused by risk-creating conduct: Problems in distinguishing between depraved mind murder, second degree murder, involuntary manslaughter, and noncriminal homicide in New Mexico," 20 N.M.L. Rev. 55 (1990).

31-18-15.1. Alteration of basic sentence; mitigating or aggravating circumstances; procedure.

A. The court shall hold a sentencing hearing to determine if mitigating or aggravating circumstances exist and take whatever evidence or statements it deems will aid it in reaching a decision. The court may alter the basic sentence as prescribed in Section 31-18-15 NMSA 1978 upon a finding by the judge of any mitigating or aggravating circumstances surrounding the offense or concerning the offender. If the court determines to alter the basic sentence, it shall issue a brief statement of reasons for the alteration and incorporate that statement in the record of the case.

B. The judge shall not consider the use of a firearm or prior felony convictions as aggravating circumstances for the purpose of altering the basic sentence.

C. The amount of the alteration of the basic sentence for noncapital felonies shall be determined by the judge. However, in no case shall the alteration exceed one-third of the basic sentence; provided, that when the offender is a serious youthful offender or a youthful offender, the judge may reduce the sentence by more than one-third of the basic sentence.

History: 1978 Comp., § 31-18-15.1, enacted by Laws 1979, ch. 152, § 2; 1993, ch. 77, § 6.

The 1993 amendment, effective July 1, 1993, added the language beginning "provided, that" at the end of Subsection C.

Section concerns sentences for felony convictions. — This section concerns only the alteration of the basic sentences for felony convictions. There is no rule or statute in the district or magistrate courts specifically requiring the court to provide defendants in misdemeanor cases the right to speak before sentence is pronounced. *State v. Stenz*, 109 N.M. 536, 787 P.2d 455 (Ct. App. 1990).

Increasing sentence based on consideration of element of offense.

Where the defendant was charged with rape of a child, criminal sexual contact of a minor, and contributing to the delinquency of a minor, the court properly considered the minority of the victims as an aggravating circumstance even though it was an essential element of each crime. *State v. Cawley*, 110 N.M. 705, 799 P.2d 574 (1990).

Notice of state's intent to seek aggravation. — A defendant must be given notice of the state's intention to seek aggravation and of the aggravating circumstances on which it intends to rely, unless the circumstance was itself an element of the underlying offense or a fact used to establish such an element. While the court may rely upon aggravating circumstances not urged by the state, the court should also provide notice to the defendant of those circumstances that were not established at trial under the foregoing exception. *Caristo v. Sullivan*, 112 N.M. 623, 818 P.2d 401 (1991).

Statement of reasons for alteration.

Although several of the aggravating factors considered by the court in a fraud case were proper, consideration "that the money is apparently gone or has been spent", without more, was a neutral factor and, on remand for resentencing, should not be considered unless the court can spell out why this is an aggravating factor. *State v. Whitaker*, 110 N.M. 486, 797 P.2d 275 (Ct. App. 1990).

Defendant's cooperation with authorities. — A sentencing judge may take into account as a mitigating factor a defendant's voluntary cooperation with authorities. However, a sentence may not be increased based upon a defendant's failure to cooperate. *State v. Callaway*, 109 N.M. 564, 787 P.2d 1247 (Ct. App. 1989), cert. denied, 496 U.S. 912, 110 S. Ct. 2603, 110 L. Ed. 2d 283 (1990).

Trial court's offer to cut defendant's sentence in half if he provided information pertaining to another individual involved in the crime was a permissible extension of an offer of leniency to the defendant. *State v. Callaway*, 109 N.M. 564, 787 P.2d 1247 (Ct. App. 1989), cert. denied, 496 U.S. 912, 110 S. Ct. 2603, 110 L. Ed. 2d 283 (1990).

Court must specify aggravating circumstances. — Case was remanded for a new sentencing hearing on defendant's convictions for kidnapping, criminal sexual penetration, and robbery, where the trial court found the existence of aggravating circumstances, but did not specify what those circumstances were. *State v. McGuire*, 110 N.M. 304, 795 P.2d 996 (1990).

The preferred practice is for a sentencing judge to note the factors argued in mitigation and indicate whether they are outweighed by any aggravating factors; however, a sentencing judge is not required to make detailed, exhaustive findings or cite every claim or nuance advanced. *State v. Watchman*, 111 N.M. 727, 809 P.2d 641 (Ct. App. 1991).

Impermissible aggravating factor. — While the victim's blood relationship to defendant arguably was a circumstance surrounding the offense of criminal sexual penetration, it was error for the court to consider such relationship as an aggravating factor at sentencing on a criminal sexual penetration count after defendant had also been convicted of incest. *Swafford v. State*, 112 N.M. 3, 810 P.2d 1223 (1991).

This section does not by its own terms permit the trial judge to consider the elements of either the offense for which the defendant was sentenced or a separate, but contemporaneous, conviction as an aggravating factor. *Swafford v. State*, 112 N.M. 3, 810 P.2d 1223 (1991).

31-19-1. Sentencing authority[;] misdemeanors; imprisonment and fines; probation.

A. Where the defendant has been convicted of a crime constituting a misdemeanor, the judge shall sentence the person to be imprisoned in the county jail for a definite term less than one year or to the payment of a fine of not more than one thousand dollars (\$1,000) or to both such imprisonment and fine in the discretion of the judge.

B. Where the defendant has been convicted of a crime constituting a petty misdemeanor, the judge shall sentence the person to be imprisoned in the county jail for a definite term not to exceed six months or to the payment of a fine of not more than five hundred dollars (\$500) or to both such imprisonment and fine in the discretion of the judge.

C. When the court has deferred or suspended sentence, it shall order the defendant placed on supervised or unsupervised probation for all or some portion of the period of deferment or suspension.

History: 1953 Comp., § 40A-29-4, enacted by Laws 1963, ch. 303, § 29-4; and recompiled as 1953 Comp., § 40A-29-35, by Laws 1977, ch. 216, § 16; 1981, ch. 18, § 1; 1984, ch. 106, § 1.

Cross-references. — For meaning of "Criminal Code," see 30-1-1 NMSA 1978 and note thereto. For misdemeanor penalty under Motor Vehicle Code, see 66-8-7 NMSA 1978.

Section was not applicable where defendant violated former 64-10-1, 1953 Comp., which was not a Criminal Code misdemeanor. *State v. Sawyers*, 79 N.M. 557, 445 P.2d 978 (Ct. App. 1968).

Section 30-1-6 NMSA 1978 and this section refer generally to the sentence for misdemeanors; former 64-10-1, 1953 Comp., provided a specific sentence for that misdemeanor. If the general statute, standing alone, would include the same matter as the special statute and thus conflict with the special statute, the special statute controls, since it is considered an exception to the general statute. *State v. Sawyers*, 79 N.M. 557, 445 P.2d 978 (Ct. App. 1968).

Prosecution for violation of 25-3-15 NMSA 1978 regulation of meat inspection board. — In a prosecution for violation of 25-3-15 NMSA 1978, declaring slaughter without inspection and sale of uninspected meat to be misdemeanors, and 77-2-22 NMSA 1978, declaring violation of a regulation of the meat inspection board to be a petty misdemeanor, the trial court's sentencing authority for the offense is this section. *State v. Pina*, 90 N.M. 181, 561 P.2d 43 (Ct. App. 1977).

Confinement for more than one year in custody of corrections department. — Defendant whose continuous sentence was for more than one

year was properly sentenced to the custody of the corrections department rather than the county jail, as the place of confinement, under this section, 31-20-2A and 33-2-39 NMSA 1978, depends on the length of confinement. *State v. Musgrave*, 102 N.M. 148, 692 P.2d 534 (Ct. App. 1984).

Jury trial in misdemeanor cases. — Those misdemeanors triable in district court do not provide for a trial by jury unless such crime was of the type which enjoyed and permitted trial by jury at the time of the adoption of N.M. Const., art. II, § 12. 1964 Op. Att'y Gen. No. 64-37.

Place of confinement is county jail. — The place of confinement for misdemeanors under the Criminal Code is the county jail under this section. *State v. Sawyers*, 79 N.M. 557, 445 P.2d 978 (Ct. App. 1968).

Magistrate court may order restitution. — The magistrate court may, as part of its sentencing power, order a Criminal Code or Motor Vehicle Code violator to make restitution. 1979 Op. Att'y Gen. No. 79-18.

Law reviews. — For article, "The New Mexico Children's Code: Some Remaining Problems," see 10 N.M.L. Rev. 341 (1980).

For comment, "The Constitution is Constitutional — A Reply to The Constitutionality of Pretrial Detention Without Bail in New Mexico," see 13 N.M.L. Rev. 145 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 21 Am. Jur. 2d Criminal Law §§ 28 to 30, 537.

Admissibility of expert testimony as to appropriate punishment for convicted defendant, 47 A.L.R.4th 1069.

Appealability of order suspending imposition or execution of sentence, 51 A.L.R.4th 939.

ARTICLE 20

Sentencing

- Sec.
 31-20-1. Sentence of corporations.
 31-20-2. Place of imprisonment; commitments.
 31-20-3. Order deferring or suspending sentence; diagnostic commitment.
 31-20-4. Application of order deferring or suspending sentence.
 31-20-5. Placing defendant on probation.
 31-20-6. Conditions of order deferring or suspending sentence.

- Sec.
 31-20-7. Repealed.
 31-20-8. Effect of termination of period of suspension without revocation of order.
 31-20-9. Completion of total term of deferment.
 31-20-10. Character of order.
 31-20-11. Credit for time pending appellate review.
 31-20-12. Credit for time prior to conviction.

